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No. —.

In the District Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, PETITIONER,

v.

INTERNATIONAL HARVESTER COMPANY AND OTHERS, DEFENDANTS.

PETITION IN EQUITY.

CHARLES C. HOUPT,
United States Attorney.

GEORGE W. WICKERSHAM,
Attorney General.

JAMES A. FOWLER,
Assistant to the Attorney General.

EDWIN P. GROSVENOR,
Special Assistant to the Attorney General.

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In the District Court of the United States for the District of Minnesota.

THE UNITED STATES OF AMERICA, petitioner,
v.
INTERNATIONAL HARVESTER COMPANY and others, defendants.

No. ——.

ORIGINAL PETITION.

To the honorable judges of the District Court of the United States for the District of Minnesota, sitting in equity:

The United States of America, by Charles C. Houpt, its attorney for the district of Minnesota, acting under the direction of the Attorney General, brings this proceeding in equity against International Harvester Company, International Harvester Company of America, International Flax Twine Company, Wisconsin Steel Company, The Wisconsin Lumber Company, Illinois Northern Railway, The Chicago, West Pullman & Southern Railroad Company, Cyrus H. McCormick, Charles Deering, James Deering, John J. Glessner, William H. Jones, Harold F. McCormick, Richard F. Howe, Edgar A. Bancroft,

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George F. Baker, William J. Louderback, Norman B. Ream, Charles Steele, John A. Chapman, Elbert H. Gary, Thomas D. Jones, John P. Wilson, William L. Saunders, George W. Perkins.

The defendants above named, engaged in interstate trade and commerce in harvesting and agricultural machinery, tools and implements and binder twine, are violating the provisions of the act of Congress passed July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and this proceeding is instituted to prevent and restrain the hereinafter particularly described agreements, contracts, combinations, and conspiracies in restraint of, and restraints upon, interstate trade in such articles; the attempts to monopolize, and the contracts, combinations, and conspiracies to monopolize, and the existing monopolizations of parts of trade and commerce among the several States in such commodities.

On information and belief, your petitioner alleges and shows:

I.

International Harvester Company is a corporation organized under the laws of New Jersey, with its principal offices at Chicago, Ill., in the Harvester Building.

International Harvester Company of America is a corporation organized under the laws of Wisconsin, with its principal offices at Chicago, Ill., in the Harvester Building.

International Flax Twine Company is a corporation organized under the laws of the State of Minnesota, with its principal office at St. Paul, Minn.

The Wisconsin Steel Company is a corporation organized under the laws of the State of Wisconsin, and has offices at Chicago, Ill., in the Harvester Building.

The Wisconsin Lumber Company is a corporation organized under the laws of the State of Wisconsin, and has offices at Chicago, Ill., in the Harvester Building.

Illinois Northern Railway is a corporation organized under the laws of the State of Illinois, with its principal office in Chicago, Ill.

The Chicago, West Pullman & Southern Railroad Company is a corporation organized under the laws of the State of Illinois, with its principal office in Chicago, Ill.

Said defendants will be hereinafter referred to as "corporation defendants" and "defendants."

The individuals made defendants herein and hereinafter called "individual defendants" and "defendants" have been for a long time and now are directors of said International Harvester Company, attend the meetings of the board of directors at the Harvester Building, Chicago, participate in the direction and management of its business, and are responsible therefor.

Defendant Cyrus H. McCormick has been since its organization president of International Harvester Company, one of the three voting trustees hereinafter

more particularly referred to, and a member of the finance committee of that company. He has been since September, 1902, president and one of the directors of the International Harvester Company of America.

Defendant Charles Deering has been since its organization chairman of the board of directors of the Harvester Company, one of the three voting trustees, and a member of the finance committee. He has been since September, 1902, chairman of the board of directors and one of the directors of the International Harvester Company of America.

Defendants James Deering, John J. Glessner, William H. Jones, and Harold F. McCormick have been since its organization vice presidents of the International Harvester Company, and also since September, 1902, vice presidents and directors of the International Harvester Company of America.

Defendant Richard F. Howe has been since its organization secretary of the International Harvester Company, and since September, 1902, secretary of the International Harvester Company of America, and a director of that company.

Defendant George W. Perkins has been since the organization of the International Harvester Company one of the three voting trustees and a member of the finance committee. He has also been since September, 1902, a director of the International Harvester Company of America.

The defendants, George F. Baker, Elbert H. Gary, and Norman B. Ream, have been for a long time and

now are members of the finance committee and directors of the International Harvester Company.

The defendant, Edgar A. Bancroft, is a director of and general counsel for the International Harvester Company.

II.

The object of this suit is to remove the restraints which defendants herein have imposed upon trade and commerce in agricultural machinery and implements and more particularly upon commerce among the several States in harvesting machinery and binder twine.

Harvesting implements constitute the most important class of the several classes of agricultural tools and implements. Agricultural implements, broadly speaking, may be divided in five classes, as follows:

1. Tillage implements, designed to prepare the soil for seeding, such as plows and harrows, and implements designed to keep the soil in good condition, such as cultivators.

2. Seeding implements used in the planting and sowing of the crops—for instance, drills and seeders and corn planters.

3. Harvesting implements, designed to aid the harvesting of the corps. These include harvesters or binders, mowers, reapers, rakes, and similar implements.

4. Threshing machinery.

5. Implements and machinery designed for general agricultural use, such as wagons, manure spreaders,

gasoline engines, cream separators, tractors, and the smaller implements, such as hoes, forks, hand rakes, binder twine, and kindred lines.

In many States the farmer's expenditures for harvesting machinery and twine aggregate considerably more than 50 per cent of the total expense incurred by him in purchasing agricultural machinery and implements of all kinds. That is to say, including only such agricultural machinery as is essential to successful farming, it is necessary that the farmer invest in the purchase of harvesting machinery and binder twine more than half the capital that he puts into all kinds of agricultural machinery.

As a rule agricultural implements are sold by the manufacturer to the retail implement dealer and by the latter to the farmer. The wholesaler or jobber, so prominent in other industries, plays but a small part in the distribution of agricultural implements from the manufacturer to the farmer.

Almost every city, town, village and hamlet in the United States has one or more retail implement dealers. These buy directly from the manufacturer and sell directly to the farmer. Their relation to the manufacturer may be that of his agent instead of a purchaser from him, but in any event usually no jobber intervenes.

Generally speaking, these implement dealers handle all classes of agricultural machines and implements, for the profits on a few sales of one class would not enable the implement dealer to exist.

It follows that a monopoly acquired in one of the classes of agricultural machinery, particularly har-

vesting machinery, may easily form the basis of a monopoly of the other classes. The implement dealer must be able to sell each class in order to continue in business. A combination controlling the output and distribution of harvesting implements may expand into the other classes of agricultural implements and acquire a monopoly therein by withholding from the dealer its harvesting implements if he refuse to buy the combination's added lines of agricultural machinery.

Prior to 1902 there were 10 or 12 establishments for the manufacture and sale of harvesting implements in successful operation in the United States, notably at Chicago, where there were several; Akron and Springfield, Ohio; Milwaukee, Wis.; Sterling, Ill.; Auburn, N. Y.; St. Paul, Minn.; and West Pullman, Ill. These were separate and independent. They sold, shipped, and distributed their products throughout the United States to implement dealers and others, all as a part of interstate commerce and in active and open competition. Each had agents in the several States soliciting the business of the implement dealers, and no one concern controlled the supply of harvesting machines.

By advertisement and otherwise the trade names of many harvesting machines, particularly binders, mowers, rakes, and reapers, had become generally known to farmers. These well-known and standard types of machines commanded many purchasers without special reference to the actual manufacturer;

in fact, the well-advertised popular binders and mowers have in a sense come to be staples in the business of the implement dealer, without which the implement dealer can only with great difficulty, if at all, build up or maintain a successful business.

Interstate trade and commerce in harvesting and agricultural implements for a long time grew and expanded along the general lines described, and but for the combinations, conspiracies, attempts to monopolize, monopolies, and other unlawful practices hereinafter stated would have so continued, to the great advantage of farmers and the general public.

III.

Before 1902 the aggregate annual output of five separate concerns manufacturing and selling harvesting machinery and twine, including binders, mowers, reapers, rakes, etc., amounted to over 85 per cent of all of the harvesting machinery and more than 50 per cent of all of the binder twine produced and sold in the United States. These concerns were McCormick Harvesting Machine Company, an Illinois corporation, capital stock, $2,500,000, with factories and plants located at Chicago, Ill.; the Deering Company, a copartnership, with factories at Chicago, Ill.; the Plano Manufacturing Company, an Illinois corporation, capital stock, $1,000,000, with factory at West Pullman, Ill.; Warder, Bushnell & Glessner Company, an Ohio corporation, capital stock, $3,000,000, with factory at Springfield, Ohio; Milwaukee Har-

vester Company, a Wisconsin corporation, capital stock, $1,000,000, with factory at Milwaukee, Wis.

Each of the five—independent and in unrestrained competition with all others likewise engaged—had established a successful, profitable, and expanding business. Each company sold and shipped its products, harvesting machinery and twine, from the place of manufacture to States of the United States other than the States wherein the products had been manufactured. The five companies had agents throughout the United States soliciting orders of their products which were then shipped pursuant to such orders from their respective factories to the purchasers. All these companies sold and shipped their machines generally throughout the United States, and so were engaged in commerce among the several States in harvesting machinery and twine within the meaning of the act of Congress of July 2, 1890, commonly called the "Sherman Antitrust Act."

In July, 1902, defendants Cyrus H. McCormick, Charles Deering, John J. Glessner, William H. Jones, George W. Perkins, and others, nearly all of whom were owners, officers, directors, stockholders, and agents of the five concerns above named, believing combination would yield large profits, determined to bring it about, destroy existing competition among the five concerns, and through combinations and agreements in restraint of trade to exclude all others, secure control of and monopolize interstate trade and commerce in harvesting machinery and twine.

They further determined that when they had accomplished the purpose just mentioned they should expand into other classes of agricultural machinery, and finally monopolize interstate trade and commerce in agricultural machinery of all kinds, their purpose being to use the power obtained by a monopoly of trade in harvesting machinery in such a way as to acquire a similar monopoly in other classes of agricultural machinery.

The combination was to take the form of a corporation to be created under the law of such a State as permitted to its corporations the widest powers, to which corporation the five concerns named above were to transfer all their property and business as going concerns; the individuals who owned and controlled these concerns were to receive as the consideration for such transfer shares of the capital stock of the new corporation and no other consideration. Thereafter this corporation was to carry on as one business the business of the five concerns which had theretofore been competing.

Accordingly in July, 1902, with the unlawful objects and purposes just mentioned, the McCormick Harvester Company, The Deering Company, the Plano Manufacturing Company, and Warder, Bushnell & Glessner Company executed with one W. C. Lane identical preliminary agreements to transfer their properties to Lane, selected by the parties as a mere conduit to the corporation which was to be the ultimate purchaser.

About the same time certain of the defendants, or others acting for the defendants, secured an option to purchase the plant, business as a going concern, and capital stock of the Milwaukee Harvester Company.

The preliminary agreements referred to provided, among other things, that W. C. Lane, upon the acquisition of the properties, should sell them to a corporation thereafter to be organized; that the purchase price to be paid by Lane to each of the four vendor companies was to be payable in full-paid and nonassessable shares of the capital stock of the purchasing company, taken at par; that the new company was to have such corporate title, capital stock, organization, by-laws, directors, and committees as should be approved by J. P. Morgan & Company; that the amount of the capital stock was to be determined after the ascertainment of the aggregate value of all its assets; that the purchase was to take effect some day in September, 1902, and the performance of the contract completed prior to January 1, 1903; that the charter was to provide that the stockholders might enter into a voting trust; that the vendors should deposit with three trustees in a voting trust the stock of the purchasing company received as consideration for the conveyances, the trust to continue 10 years and the voting trustees to issue stock trust certificates to the real owners of the shares.

A copy of the preliminary agreement referred to above between the McCormick Harvesting Machine Company and W. C. Lane, and dated July 28,

1902, is attached hereto as a part of this petition, marked "Exhibit 1."

Accordingly, on August 12, 1902, the individuals and companies named caused to be incorporated the International Harvester Company under the laws of New Jersey with $120,000,000 capital stock, all the certificates of which were issued to W. C. Lane, who, on August 13, 1902, delivered them to three voting trustees, George W. Perkins, Cyrus H. McCormick, and Charles Deering, in trust for the individuals who had owned and transferred the properties of the four concerns to Lane, which properties were immediately conveyed to the new company. Meanwhile the option on the property and business of the Milwaukee Harvester Company was exercised, that property was conveyed to Lane, on July 28, 1902, and subsequently by him transferred to the International Harvester Company, the new company.

A copy of the voting trust agreement between W. C. Lane and the three trustees, Cyrus H. McCormick, Charles Deering, and George W. Perkins, dated August 13, 1902, is attached hereto as a part of this petition, marked "Exhibit 2."

In due course the three trustees issued stock trust certificates to the persons entitled to the certificates of capital stock in the new company. Each stock trust certificate certifies that the holder thereof will be entitled to receive a certificate for a stated number of fully paid shares of the capital stock of the International Harvester Company, and in the mean-

time to receive payments equal to the dividends collected by the voting trustees upon a like number of shares of the capital stock standing in the names of the trustees. It is provided in the stock trust certificates that until the actual delivery of the stock certificates the voting trustees shall possess, in respect of any and all such stock, and shall be entitled, in their discretion, to exercise all rights and powers of absolute owners of said stock. It is provided in the voting trust agreement that the action of a majority of the voting trustees expressed from time to time at a meeting or by writing with or without a meeting shall constitute the action of the voting trustees.

The stock of the new company was allotted and received as follows (the same, however, being delivered to the voting trustees and the real ownership thereof thereafter evidenced by the stock trust certificates above described):

The total stock issued was $120,000,000. Of this stock, $53,400,000 was apportioned among the owners of the McCormick, Deering, Warder, Bushnell & Glessner, and Plano companies, in consideration of the transfer by each company of all its real estate, factories, plants, buildings, improvements, machinery, patterns, tools, apparatus, fixtures, patents, inventions, devices, patent rights, licenses, trademarks, trade-names, and good will of all and singular said property as a going concern, and supplies, products, and materials on hand, pending contracts, railroad equipment, as well as all other property of the vendor appertaining to the vendor's business, except bills and accounts receivable.

Stock in the amount of $40,000,000 was apportioned among the owners of the McCormick, Deering, Plano and Warder, Bushnell & Glessner companies in consideration of the assignment by the vendor companies to the purchasing company of bills and accounts receivable, of like amounts, guaranteed by the vendors, or for cash.

Stock in the amount of $3,148,196.66 was issued to J. P. Morgan & Company, of New York, who had paid that amount in cash to secure the property of the Milwaukee Harvester Company, which was conveyed to the International Harvester Company, as stated above.

Stock in the amount of $3,451,803.34 was issued to J. P. Morgan & Company for services rendered and for legal expenses.

Stock in the amount of $20,000,000 was issued at par for cash, the subscribers being in large part owners of or persons interested in the four conveyor concerns named above.

The articles of incorporation declare the purposes of the International Harvester Company as follows:

> The objects for which the corporation is formed are as follows, viz:
>
> To manufacture, sell, and deal in harvesting machines, tools, and implements of all kinds, including harvesters, binders, reapers, mowers, rakes, headers, and shredders; agricultural machinery, tools and implements of all kinds; binder twine, and all repair parts and other devices, materials and articles used, or intended for use, in connection with any kind of

harvesting or agricultural machines, tools, or implements.

To engage in the manufacture or production of, and to deal in, any materials or products which may be used in or in connection with the manufacture of harvesting or agricultural machines, tools, and implements.

To apply for, obtain, register, lease or otherwise acquire, and to hold, use, own, operate, sell, assign or otherwise dispose of, any trademarks, trade names, patents, inventions, improvements and processes used in connection with, or secured under, letters patent of the United States or of other countries or otherwise.

The business or purpose of the corporation is, from time to time, to do any one or more of the acts and things herein set forth.

Without in any particular limiting any of the powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to guarantee any dividends or bonds, contracts or other obligations; to make and perform contracts of any kind and description; and in carrying on its business, and for the purpose of attaining or furthering any of its objects to do any and all other acts and things, and to exercise any and all other powers which a natural person could do and exercise, and which now are or hereafter may be authorized by law.

The corporation shall have power to conduct its business in other States and Territories, and in foreign countries, and to have one or more offices out of the State of New Jersey,

and to hold, purchase, mortgage, and convey real and personal property both in and out of the State of New Jersey.

* * * * *

All corporate powers shall be exercised by the directors except as otherwise provided by statute, or by this certificate. The by-laws may prescribe the number of directors necessary to constitute a quorum, which number may be removed at any time by vote of the directors, or by any committee or superior officer upon whom such powers of removal may be conferred by the by-laws or by vote of the directors.

The directors by vote of a majority of the whole board may appoint from their number an executive committee and any other standing committees, and such committees shall have and may exercise such powers as may be conferred or authorized by the by-laws, or by the directors.

The defendant Cyrus H. McCormick, former president and director of the McCormick Harvesting Machine Company, became president of the new company and has been its president since its organization. Defendant Charles Deering, formerly a member of the firm of the Deering Company, has been chairman of the board of directors of the International Harvester Company since its organization. Defendants James Deering, formerly a member of the Deering Company, Harold F. McCormick, formerly vice president of the McCormick Harvesting Company, John J. Glessner, formerly vice president of the Warder, Bushnell &

Glessner Co., and William H. Jones, formerly vice president of the Plano Manufacturing Company, have all been vice presidents of the International Harvester Company since its organization. Defendants Richard F. Howe, formerly a member of the Deering Company, and said Harold F. McCormick, have been, respectively, secretary and treasurer of the International Harvester Company since its organization. All the officers above named and also Stanley F. McCormick, formerly of the McCormick Harvesting Company, Cyrus Bentley, former attorney for the McCormick Company, and William Deering, former member of the Deering Company, became directors of the International Harvester Company upon its organization. Each of the directors and officers above named owned an interest and participated in managing one of the acquired concerns and was selected according to preliminary arrangement.

The International Harvester Company was incorporated as an instrumentality to effect the unlawful purposes of defendants, as a means of destroying competition, of unlawfully combining and confederating a number of independent manufacturers, dealers in and distributors of harvesting machinery, tools, and implements, and binder twine, and of creating a monopoly in interstate commerce therein.

Having in the ways and for the purposes described acquired the five old concerns, the International Harvester Company began and has continued to operate and control all their affairs in concert and agreement; and that corporation then became and with added

acquisitions has ever since been itself a combination in restraint of trade and commerce between the States. Thereafter the total output of the five concerns of harvesting machinery, tools, and implements and twine was sold, shipped, transported, and distributed by one organization, and the machines of the several manufacturers were sold by defendants at the same prices; that is to say, one organization thereafter sold and distributed at the same prices all binders, mowers, etc., which prices competition had previously controlled; thenceforth defendants demanded and received the same price for a "McCormick," "Deering," "Plano," "Milwaukee," or "Champion" binder or mower; and thereby interstate trade and commerce in harvesting machinery and twine was hindered and restrained.

IV.

About the middle of 1902, as previously stated, the International Harvester Company, its officers and directors, defendants Cyrus H. McCormick, Harold F. McCormick, Charles Deering, James Deering, Richard F. Howe, William H. Jones, John J. Glessner, George W. Perkins, Charles Steele, Elbert H. Gary, George F. Baker, Norman B. Ream, and others, entered into and became parties to, and engaged in a combination in unlawful restraint of interstate trade and commerce in harvesting machinery, tools, and implements, and binder twine, and by means thereof and otherwise monopolized said trade and commerce. Said defendants

and others who became associates ever since have been engaged in maintaining and perpetuating said illegal combination and monopoly in harvesting implements, and with expanding purpose to dominate allied industries have been unlawfully attempting to enlarge the monopoly then acquired by them and to monopolize interstate trade and commerce in agricultural machinery, tools, and implements of all kinds.

In order to bring about the desired ends and with the above-enumerated purposes, defendants and their associates have adopted such means as seemed expedient; to enumerate all of them would too much encumber this petition. But, among others, the general lines of action, practice, operation, manipulation, and management hereinafter described have been and are now being followed, and unless prohibited will be continued hereafter.

By means of the combination which was originated by defendants in 1902 and given the form of a New Jersey corporation, named the International Harvester Company, the defendants at that time monopolized commerce in harvesting machines, particularly harvesters or binders and mowers, reapers, and rakes, and in binder twine; the vast power acquired by virtue of that combination defendants have since used and are now using as a means to monopolize all other classes of agricultural machinery; one monopoly is to be a stepping stone to another monopolization.

Since the formation of the combination in 1902 defendants have attempted to eliminate all competi-

tors in the harvesting business, among other ways by defendants securing control of all the retail implement dealers in the United States, through contracts with such dealers, in the years 1903, 1904, and 1905, making them exclusively sales agents of defendants and binding them under penalties not to sell or be interested in the sale of any grain binder, header, corn binder, husker, shredder, reaper, mower, stacker, sweep rake, hay rake, or hay tedder not manufactured by defendant International Harvester Company. In the years mentioned defendants concluded contracts of the character described with the great majority of retail implement dealers in the United States.

In the years 1906, 1907, 1908, 1909, 1910, 1911, and down to and including the time of the filing of this petition, defendants have obtained and exercised a like control and domination over such dealers by means of agency contracts providing that the defendant International Harvester Company of America, hereinafter described, may at any time, when it considers its interests are neglected or jeopardized, without notice, annul and terminate the agency contract and take possession of all accounts, moneys, machines, etc., in possession of the dealer by virtue of the contract. In the years mentioned, defendants concluded contracts of the character described with the great majority of the retail implement dealers in the United States and defendants have used and are now using the power given by the termination clause of such contracts in order to force such dealers to

handle only the harvesting and other machines of defendants and to refrain from handling or promoting the sale of the machines of competitors.

By reason of the fact that defendants manufacture the well-known and standard types of harvesting machines and implements, without which the implement dealer can only with great difficulty, if at all, maintain a successful business, defendants have been and now are enabled to compel such implement dealers to enter into contracts of the character described.

In towns where there are more than one retail implement dealer defendants have adopted and are now carrying out the policy of giving to each dealer the exclusive agency for a certain well-known machine, such as the "McCormick" or "Deering" grain binder or mower, instead of giving to one dealer an agency for all defendants' lines, intending thereby to obtain for themselves the services of all responsible implement dealers, and, by means of the contracts hereinbefore described, to monopolize all trade and commerce in harvesting and agricultural implements.

Since defendants acquired a monopoly of harvesting machinery, they have expanded into other lines of agricultural implements and are now engaged in securing a monopoly of those lines, among other ways by threats to dealers to withhold from them the harvesting implements of the combination unless given special treatment and preference in respect to the new lines of agricultural machinery manufactured by defendants, or by allowing special confidential com-

missions on harvesting machinery to such dealers, or by giving unusual credit, or by the exercise of the power given by the annulment clause in the contracts above described.

Defendants, with the purpose to dominate the industry of manufacturing, selling and distributing harvesting and agricultural machinery and implements and twine, have purchased and absorbed competitors as hereinafter stated. The making of the types of harvesting and agricultural machinery acquired by these purchases has been abandoned to the extent hereinafter stated.

The power in combination of defendants in interstate commerce in harvesting machinery and twine deters and prevents others from becoming competitors therein, and has made effective competition with defendants in harvesting machinery impossible, and in other lines of agricultural machinery well nigh impossible.

Defendants have concealed their ownership of controlled companies, have procured and permitted the same to be held out and advertised as wholly independent and without connection with them, the "Trust" or any "Combination," intending thereby to mislead, deceive, and defraud the public and more effectually cripple existing competitors and keep out new ones.

Defendants have resorted to unfair trade methods; have made inaccurate and misleading statements concerning rival machines or concerning the credit of competitors; have by misrepresentations sought to

induce competitors' agents and dealers to abandon them, and in divers unfair ways have endeavored to destroy them, and for the purpose of destructive competition have reduced prices of their machines in some localities below cost of production and distribution while keeping prices up in other localities.

Defendants have systematically bought up patents upon harvesting machinery, tools, and implements, and acquired all new inventions therein, in order thereby more effectually to perpetuate the combination and monopoly hereinbefore described.

V.

Defendant, the International Harvester Company of America, is the successor of the Milwaukee Harvester Company, a Wisconsin corporation, which, as stated above, conveyed its property and business through J. P. Morgan & Co. and W. C. Lane to the new company, International Harvester Company of New Jersey, in August, 1902. Some weeks thereafter, in pursuance of the general purposes of defendants, the new company transferred all the shares of capital stock of the Milwaukee Harvester Company, to the three voting trustees in trust for the stockholders of the International Harvester Company, changed the name of the Milwaukee company to International Harvester Company of America, and then concluded with it an exclusive contract for the sale in the United States of the entire output of the International Harvester Company. Under this arrangement, which is in force to-day, the International Harvester Com-

pany of America buys from the manufacturing company all the agricultural and harvesting implements, twine, and other articles manufactured by the latter and sells the same to implement dealers and others located throughout the United States, or makes such implement dealers its agents for their sale to the farmer.

The International Harvester Company of America is merely the selling department of the other international company. Since its acquisition by the International Harvester Company it has paid no dividends upon its capital stock, $1,000,000. It buys and sells at the prices fixed by the parent company. The officers of the two companies have been the same since September, 1902. The nine directors of the subsidiary are also directors of the larger company. In fact, the Wisconsin company is a bookkeeping arrangement, given the form of a corporate entity, with a small capitalization, for the purpose of enabling the larger company to do business in States from which it is debarred by reason of its huge capitalization.

The arrangement between the International Harvester Company and International Harvester Company of America was further devised and is now being carried out by the defendants for the purpose of giving to the New Jersey company the appearance of not being engaged in interstate commerce; in other words, in order to accomplish an ostensible segregation of the manufacturing or intrastate business of the corporation from its distributing or interstate business, thereby securing to the latter protection against the

laws of the several States which have for their object the suppression of monopolies or their exclusion from their borders.

The International Harvester Company of America has been and is being used by the International Harvester Company and the other defendants as a mere instrumentality in carrying out and effecting the monopolistic purposes of defendants and the restraints of interstate trade and commerce above described.

VI.

In January, 1903, in pursuance of the general purpose of defendants, defendant, International Harvester Company, acquired, through purchase of all the capital stock of and subsequent conveyance from D. M. Osborne & Co., a New York corporation, with a plant at Auburn, N. Y., engaged in interstate trade and commerce in harvesting machinery, twine, and tillage implements, and in manufacturing, selling, and distributing harvesting machinery, twine, and tillage implements throughout the United States in competition with it, all grantor's business of manufacturing and selling, dealing in and distributing harvesting machinery and twine as a going concern, all assets, property, and good will and the exclusive right to use the corporate name, paying therefor cash and five-year notes. The principal owners of the grantor company, long successfully engaged in manufacturing and selling harvesting machinery, agreed with grantee to enter its service for a certain period in managing the business and property acquired and

not otherwise or thereafter to engage in or carry on or become interested in the business of manufacturing or dealing in harvesting machinery.

After the five concerns had gone into the International Harvester Company, the Osborne Company remained by far the largest single manufacturer outside the combination.

For two years defendant, International Harvester Company, concealed and denied its association with D. M. Osborne & Co., and operated the latter as an independent company. This was in pursuance of defendant's policy, by disguising ownership, to use controlled companies to break down competition and secure for themselves the benefit of public sentiment against combinations.

The plant is now operated as a branch of the International Harvester Company.

Among the assets of D. M. Osborne & Co., defendants acquired the plant and business of the Columbian Cordage Company long engaged in manufacturing binding twine and selling the same throughout the United States.

In the early part of 1903, in pursuance of their general purpose, defendants, through the International Harvester Company, acquired control of the Aultman Miller Company, engaged at Akron, Ohio, in interstate commerce in harvesters, mowers, and twine, selling and distributing its products through the United States. By agreement of the defendants

and the parties interested, a new company, the Aultman Miller Buckeye Company, an Ohio corporation, was organized, which took over the plants and business as a going concern of the Aultman Miller Co. This company, by agreement with defendants, for a long time concealed and denied association with them and advertised itself as independent and was used by defendants as an instrument to cripple opponents, with the view of driving them out of business and of destroying competition. In 1906 the International Harvester Company acquired from the Aultman Miller Buckeye Company all its business, paying therefor cash. Defendants long since abandoned the manufacture of harvesting machinery at the plant at Akron, Ohio, which was closed. Thereafter the International Harvester Company entered upon the manufacture of new lines at that plant, namely, autobuggies and tractors. The making of the "Buckeye" mowers and harvesting machinery formerly made by the Aultman Miller Company was discontinued.

In the early part of 1903, in pursuance of their general purpose, defendants, through the International Harvester Company acquired, by purchase of the Grass Twine Company, control of the stock and business of the Minnie Harvester Company, successor of the Minneapolis Harvester Company, long engaged at St. Paul, Minn., in the manufacture of harvesters and twine, selling and distributing its products in interstate commerce throughout the United States. Thereafter by agreement of the defendants, the Minnie Harvester Company for a long time concealed and de-

nied association with them and advertised itself as independent, in pursuance of the policy of defendants, by disguising ownership to use controlled companies to break down opposition and secure for themselves the benefit of the sentiment against combinations. In the latter part of 1905 the International Harvester Company acquired, by conveyance, the business as going concerns of the companies named above, and thereupon the plant of the Minnie company was dismantled as a manufactory of binders and mowers and subsequently converted into a manufactory of twine; defendants discontinued the manufacture and sale of the "Minnie" binders and mowers.

In the early part of 1903, in pursuance of the general purpose of defendants, the International Harvester Company, acquired control of the Keystone Company, an Illinois corporation with a plant at Sterling, Ill., long engaged in the manufacture and sale of harvesting machinery, and particularly hay tools and mowers, shipping and distributing these articles throughout the United States. At that time by agreement of defendants certain officers of the International Harvester Company purchased for cash all but a few shares of the stock of the Keystone Company and thereafter operated that company as an independent company, falsely advertising and holding it out to be independent of any trust or combine, in order that by disguising ownership defendants might use it as an instrument to cripple opponents, with the view of driving them out of business and of destroying competition.

In September, 1905, the International Harvester Company acquired, by conveyance from the Keystone Company, all the business of the latter as a going concern. The plant of the Keystone Company was at once abandoned and dismantled as a manufactory of hay tools and mowers. It was subsequently utilized for the manufacture of tillage implements and new lines. The making of the "Keystone" binders and mowers was discontinued by defendants.

In November, 1904, in pursuance of the general purposes above stated and more particularly in order to extend the control of defendants into other lines of agricultural implements, defendant, International Harvester Company, acquired for cash and notes, four-fifths of the capital stock of the Weber Wagon Company and an option on the balance, which was exercised August, 1905, long engaged at Auburn Park, Ill., in manufacturing wagons, particularly for use on farms, and in selling and distributing them throughout the United States. By subsequent conveyance said defendant acquired all the plant and business as a going concern of the Weber Wagon Company, and the plant is now operated as a branch of the International Harvester Company.

In November, 1906, defendant, International Harvester Company, in pursuance of the general purposes of defendants and in order to expand into other lines and ultimately secure control therein, acquired from the Kemp Company, for a long time engaged at Newark Valley, N. Y., and Waterloo, Iowa, in manufacturing manure spreaders and in selling and

distributing them throughout the United States all its business of manufacturing and selling manure spreaders together with all property used in the same, paying therefor cash and notes. The Waterloo plant was long since closed and abandoned; the Newark Valley works are now operated as a branch of the International Harvester Company for the manufacture of manure spreaders.

With the same purpose of expanding into allied lines of agricultural implements and acquiring control thereof, defendant, International Harvester Company, in 1906 bought from the Bettendorf Axle Company, long engaged in manufacturing wagons and in selling and shipping the same throughout the United States, all the patents of the Bettendorf Axle Company, paying therefor in cash.

In January, 1907, after an amendment of the articles of incorporation, the capital stock of the International Harvester Company was divided into two classes, $60,000,000 cumulative 7 per cent preferred and $60,000,000 common. In 1910 the issued capital stock was increased to $140,000,000 by the declaration of a stock dividend of $20,000,000 on the common stock, this being a dividend of $33\frac{1}{3}$ per cent.

VII.

Prior to August, 1902, the five concerns which combined in the formation of the International Harvester Company, as hereinbefore described, and the other companies thereafter acquired by defendants, were

buying their necessary raw materials, iron, steel, lumber, etc., in interstate commerce in competition with each other. Thereafter all such necessary raw materials were purchased by a single organization in different places in the United States and then shipped to the several plants or works of the International Harvester Company, located as hereinafter described.

In 1905, in pursuance of their general purpose, defendants, through the International Harvester Company, organized the Wisconsin Steel Company, a Wisconsin corporation, with capital stock of $1,000,000, all of which is owned by the International Harvester Company. This company preserves a separate organization, but its directors have at all times been elected by defendants, and its policy is controlled and directed by them. It operates under leases iron ore lands in Wisconsin, Minnesota, and Michigan, owns and operates coal lands and mines in Kentucky, blast furnaces for the production of pig iron at South Chicago, Ill., and steel mills and rolling mills at South Chicago and Chicago, where it produces ingots, billets, blooms, finished bars and shapes. It is engaged in interstate commerce, selling its products above mentioned to defendants and others and shipping the same from the places of production to the plants and works of defendants hereinafter enumerated under paragraph IX.

In 1905, in pursuance of their general purposes, defendants, through the International Harvester Company, organized the Wisconsin Lumber Company, a Wisconsin corporation, capital stock $250,000, all

of which is held by the International Harvester Company. This company preserves a separate organization, but its directors have at all times been elected by defendants, and its policy is controlled and directed by them. It owns timberlands and sawmills in Missouri and Mississippi. It is engaged in interstate commerce, selling lumber and the products thereof to defendants and shipping the same from Missouri and Mississippi to the plants and works of defendants hereinafter enumerated under paragraph IX.

The defendants, Wisconsin Steel Company and Wisconsin Lumber Company, are used by defendants as means and instrumentalities to eliminate competition and in pursuance of the general purposes herein above described.

In pursuance of their general purposes, defendants, in 1902, through the International Harvester Company, acquired all the capital stock, $500,000, of the Illinois Northern Railway, an Illinois corporation. The Illinois Railway is a switching company, organized in 1901 by the McCormick Harvesting Machine Company, owning or leasing some twenty-five miles of trackage, upon which are situated the plants of the International Harvester Company and other industries at Chicago. Its capital stock passed with the assets of that company to the International Harvester Company. The capital stock of the railway company is held for the benefit of the International Harvester Company, which company elects the officers and directors of the railway and controls and directs its policy. The defendants, through the

International Harvester Company, in 1904 and at other times, used the Illinois Northern Railway as a means to obtain undue preferences from railroads connecting with the Illinois Northern Railway, among other ways, by persuading and inducing such connecting railroads to allow to the Illinois Northern Railway excessive divisions of through rates on traffic, principally harvesting machinery, from the factories of the International Harvester Company at Chicago, which was transported by the switching company, the Illinois Northern Railway, and transferred by it to the said connecting roads, which thereupon allowed the Illinois Northern Railway such excessive divisions of the through rates.

In pursuance of their general purposes, defendants, in 1903, through the International Harvester Company, acquired all the capital stock, $400,000, of the Chicago, West Pullman & Southern Railroad Company, an Illinois corporation. This railroad company is a switching company operating some twenty-four miles of tracks, owned or leased, upon which are situated plants and works of the Wisconsin Steel Company and the International Harvester Company at West Pullman, Illinois, and other industries. The capital stock of the railroad company is held for the benefit of the International Harvester Company, which company elects the officers and directors of the railway and controls and directs its policy. The defendants, through the International Harvester Company, in 1904 and at other times, used the Chicago, West Pullman & Southern Railroad Com-

pany as a means to obtain undue preferences from railroads connecting with the Chicago, West Pullman & Southern Railroad Company, among other ways, by persuading and inducing such connecting railroads to allow to the Chicago, West Pullman & Southern Railroad Company excessive divisions of through rates on traffic from plants of the International Harvester Company and the Wisconsin Steel Company, which was transported by the switching company, the Chicago, West Pullman & Southern Railroad Company, and delivered by it to the said connecting railroads, which thereupon allowed the switching company such excessive divisions of the through rates.

In August, 1905, defendants, in pursuance of their general purpose, through the International Harvester Company, organized defendant, the International Flax Twine Company, a Minnesota corporation, capital stock $250,000, and thereafter, by means of said Minnesota corporation, engaged in a further extension of the business of the defendants of manufacturing and selling binder twine. To it was conveyed the plant of the Grass Twine Company at St. Paul, purchased by the defendants in the manner hereinbefore described. All the products of defendant, International Flax Twine Company, are sold by it to defendant, the International Harvester Company of America, which then sells them throughout the United States in the same manner that it sells and distributes the products of the International Harvester Company. Defendant, International Flax

Twine Company, is being used by defendants as an instrumentality in accomplishing the unlawful purposes of monopolization previously described.

VIII.

PROFITS.

The following tables show the amounts which have been paid as dividends on the stocks of International Company in the respective years mentioned and the amounts of surplus income realized and other financial results of its operations.

1903.

Stock outstanding	$120, 000, 000. 00
Dividends, 3 per cent	3, 600, 000. 00
Surplus	2, 041, 180. 61

1904.

Stock outstanding	$120, 000, 000. 00
Dividends, 4 per cent	4, 800, 000. 00
Net surplus from year's earnings after deducting dividends and expenses	858, 534. 68
Total accumulated surplus	2, 899, 715. 29

1905.

Stock outstanding	$120, 000, 000. 00
Dividends, 4 per cent	4, 800, 000. 00
Net surplus from year's earnings after deducting dividends and expenses	2, 679, 187. 36
Total accumulated surplus	5, 578, 902. 65
Total sales for the year	55, 687, 978. 27

1906.

Stock outstanding	$120, 000, 000. 00
Dividends	4, 800, 000. 00
Net surplus from year's earnings after deducting dividends and expenses	3, 046, 947. 32
Total accumulated surplus (after deducting $500,000 as a special reserve)	8, 125, 849. 97
Total sales for the year	67, 589, 056. 27

1907.

Preferred stock outstanding	$60, 000, 000. 00
Common stock outstanding	60, 000, 000. 00
Dividends on preferred stock, 7 per cent	4, 200, 000. 00
Net surplus from year's earnings after deducting dividends and expenses	3, 880, 457. 51
Total accumulated surplus	12, 006, 307. 48
Total assets	156, 282, 454. 16
Total sales for the year	78, 206, 890. 36

1908.

Preferred stock outstanding	$60,000,000.00
Common stock outstanding	60,000,000.00
Dividends on preferred stock, 7 per cent	4,200,000.00
Net surplus from year's earnings after deducting dividends and expenses	4,685,682.13
Total accumulated surplus	16,691,989.61
Total assets	157,608,632.51
Total sales for the year	72,541,771.16

1909.

Preferred stock outstanding	$60,000,000.00
Common stock outstanding	60,000,000.00
Dividends on preferred stock, 7 per cent	4,200,000.00
Dividend on common stock issued as a stock dividend, 33⅓ per cent	20,000,000.00
Net surplus from year's earnings after deducting preferred dividends and expenses	10,692,740.21
Total accumulated surplus before distribution of dividend on common stock	27,384,729.82
Total accumulated surplus after distribution of dividend on common stock	7,384,729.82
Total assets	172,795,542.61
Total sales for the year	86,614,549.55

1910.

Preferred stock outstanding	$60,000,000.00
Common stock outstanding	80,000,000.00
Dividends on preferred stock, 7 per cent	4,200,000.00
Dividends on common stock, 4 per cent	3,200,000.00
Net surplus from year's earnings after deducting dividends and expenses	8,684,819.19
Total accumulated surplus	16,069,549.01
Total assets	195,306,083.53
Total sales for the year	101,166,358.88

IX.

As previously stated, on the organization of the International Harvester Company in 1902 all assets, rights, and property belonging to the five concerns above enumerated came into the possession and ownership of the new company and since that time the International Harvester Company has carried on the business of all in that name.

It now operates as branches the following plants manufacturing harvesting and agricultural machinery, tools and implements, and binder twine. Prior to acquisition by the International Harvester Company every plant other than the Tractor works was operated by a separate company, which was in competition with all the others:

Akron works, Akron, Ohio: This plant was acquired from the Aultman Miller Company, which was manufacturing the "Buckeye" machines, harvesters, mowers, and reapers. The making of those machines has been discontinued. Defendants now manufacture at this plant a new line, auto wagons and commercial cars, for which the plant has an annual capacity of 4,000.

Champion works, Springfield, Ohio: Acquired from Warder, Bushnell & Glessner Company. Defendants manufacture at this plant harvesting machines and the following new lines: Seeding machines, hay presses, and hay tools, manure spreaders. Annual capacity, 85,000 machines.

Deering works, Chicago, Ill.: Acquired from the Deering Company. Output: Binders, reapers, mowers, rakes, headers, strippers, drills, corn machines, and binder twine, many of which are new lines. Annual capacity, 300,000 machines, 31,000 tons twine.

Keystone works, Sterling, Ill.: Acquired from the Keystone Company, which was manufacturing harvesting machines, tillage implements, hay tools, and twine. Defendants have discontinued making "Key-

stone" machines and now manufacture at this plant harrows, corn shellers, hay loaders, and side-delivery rakes, many of which are new lines. Annual capacity, 92,500 machines.

McCormick works, Chicago, Ill.: Acquired from the McCormick Harvesting Machine Company. Output: Binders, headers, reapers, mowers, rakes, corn machines, and twine. Annual capacity, 375,000 machines, 33,000 tons twine.

Milwaukee works, Milwaukee, Wis.: Acquired from the Milwaukee Harvester Company, which was manufacturing harvesting machines. Defendants now make the "Milwaukee" machines at the McCormick works and manufacture these new lines at Milwaukee, gasoline and alcohol engines, cream separators, and tractors. Annual capacity, 75,000.

Newark Valley works, Newark Valley, N. Y.: Acquired from the Kemp Company. Output: Manure spreaders. Annual capacity, 7,000.

Osborne works, Auburn, New York: Acquired from D. M. Osborne & Co., which was manufacturing harvesting machines. Output: Binders, reapers, mowers, corn harvesters, rakes, tedders, harrows, cultivators, tillage implements, and twine, many of which are new lines. Annual capacity, 275,000 machines, 15,000 tons twine.

Plano works, West Pullman, Ill.: Acquired from the Plano Manufacturing Company, which was manufacturing harvesting machines. Defendants now make the "Plano" machines at the Deering works

and manufacture at this plant new lines, manure spreaders and wagons. Annual capacity, 60,000.

St. Paul works, St. Paul, Minn.: Acquired from the Grass Twine Company and now owned by the defendant, International Flax Twine Company. Annual capacity, 4,000 tons flax twine.

Tractor works, Chicago, Ill.: A new plant built by the defendant International Harvester Company for the manufacture of tractors. Annual capacity, 1,500.

Weber works, Auburn Park, Ill.: Acquired from the Weber Wagon Company. Output: Wagons. Annual capacity, 40,000.

The International Harvester Company of America, the sales department of the International Harvester Company (as described above, pp. 23–25), has more than 90 general agencies and distributing centers in the United States and many in Canada. The products of the plants above enumerated are shipped by the International Harvester Company to these general agencies of the International Harvester Company of America scattered throughout the United States, and then are sold and shipped over the ordinary freight routes and distributed and delivered to every part of the Union as a part of interstate commerce.

Through the means hereinbefore described defendants control and utilize thousands of retail implement dealers throughout the different States.

In the beginning the only business of the International Harvester Company was the manufacture

and sale of grain harvesters or binders, and mowers, reapers, rakes, and twine, and corn harvesters, corn huskers, shredders and shockers, the principal lines being grain binders, mowers and rakes—the same as that carried on by the companies whose plants, business, and assets it acquired upon its formation; but from year to year many other agricultural machines, implements, and tools have been added, so that to-day it is manufacturing and selling all classes—tillage implements, seeding implements, harvesting machines, threshing machinery, and wagons, manure spreaders, gasoline engines, cream separators, autobuggies, automobiles, tractors, cultivators, drills, tedders, seeders, hay loaders, hay presses, sweep rakes, stackers, trucks, etc., all in pursuance of the unlawful purpose to monopolize trade hereinbefore described.

At least 90 per cent of the harvesters or grain binders and 75 per cent of the mowers and over 50 per cent of the binder twine annually produced and sold in the United States are the product of the International Harvester Company and are sold through the International Harvester Company of America as herein described. There are only three or four manufacturers of harvesting machinery in the United States other than the International Harvester Company. These, in comparison with it, are small, and as their business does not embrace the entire United States, in many sections of the country the International Harvester Company has a complete monopoly of harvesting machinery. In other lines of agricultural implements the percentage controlled by it is less, but the

varieties and relative quantities of these have increased rapidly, so that, considering agricultural implements of every kind, other than harvesting lines, its output amounts to over 30 per cent of the whole.

Through the power acquired by defendants by their monopolization of the manufacture and sale of harvesting machinery, defendants have been enabled to advance and have advanced the prices of harvesting implements in interstate commerce, to the grave injury of the farmer and the general public.

The opportunities for any new competitors are constantly being closed by defendants in all lines of agricultural implements; the agencies for distribution, the retail implement dealers, and others are rapidly coming under their undisputed control, and unless prevented and restrained, their complete unchallenged dominion of every branch of trade and commerce in agricultural implements of all kinds may be confidently expected at an early date.

X.

Petitioner avers that the combination and conspiracy to restrain the interstate trade and commerce in harvesting and agricultural machinery, tools, and implements still exists; that the defendants are carrying out the same within the State and district of Minnesota, and that many of the things herein complained of have been committed in whole and others in part within said State and district, and are now being committed therein; that the defendant, International Flax Twine Company, is located and doing business within said State and district.

PRAYER.

Wherefore petitioner prays:

I. That the combination hereinbefore described, in and of itself, as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately, be decreed to be in restraint of interstate trade and an attempt to monopolize and a monopolization thereof within the first and second sections of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

II. That the court adjudge the International Harvester Company to be a combination in restraint of interstate trade and commerce in harvesting and agricultural machinery, a restraint, and an attempt to monopolize and a monopolization thereof; that the court direct a dissolution of said combination.

III. That the International Harvester Company of America be adjudged an unlawful instrumentality operated and maintained by defendants solely for the purpose of carrying into effect the illegal purposes of said contracts, combinations, and conspiracies in restraint of interstate trade and commerce and of said attempts to monopolize, and monopolies; and that it be decreed to be in restraint of trade and commerce among the States and an attempt to monopolize and a monopolization thereof.

IV. That the court by way of an injunction restrain the movement of the products of the International

Harvester Company and of the International Harvester Company of America in the channels of interstate commerce, or, if the court should be of opinion that the public interests will be better subserved thereby, that receivers be appointed to take possession of all the property, assets, business, and affairs of said combinations, and wind up the same, and otherwise take such course in regard thereto as will bring about conditions in trade and commerce among the States in harmony with the law.

V. That the holding of stock by the International Harvester Company in the other corporation defendants under the circumstances shown be declared illegal and that it be enjoined from continuing to hold or own such shares and from exercising any right in connection therewith.

VI. That the defendants, each and all, be enjoined from continuing to carry out the purposes of the above-described contracts, combinations, conspiracies, and attempts to monopolize and monopolizations by the means herein described, or by any other, and be required to desist and withdraw from all connection with the same.

That petitioner have such other, further, and general relief as may be proper.

To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpœna directed to the said defendants: International Harvester Co., Interna-

tional Harvester Co. of America, International Flax Twine Co., the Wisconsin Steel Co., the Wisconsin Lumber Co., Illinois Northern Railway, the Chicago, West Pullman & Southern Railroad Co., Cyrus H. McCormick, Charles Deering, James Deering, John J. Glessner, William H. Jones, Harold F. McCormick, Richard F. Howe, Edgar A. Bancroft, George F. Baker, William J. Louderback, Norman B. Ream, Charles Steele, John A. Chapman, Elbert H. Gary, Thomas D. Jones, John P. Wilson, William L. Saunders, George W. Perkins, and each and every one of them, commanding them and each of them to appear herein and answer, but not under oath (answer under oath being hereby expressly waived), the allegations contained in the foregoing petition and abide by and perform such orders and decree as the court may make in the premises.

CHARLES C. HOUPT,
United States Attorney.

GEORGE W. WICKERSHAM,
Attorney General.

JAMES A. FOWLER,
Assistant to the Attorney General.

EDWIN P. GROSVENOR,
Special Assistant to the Attorney General.

EXHIBIT 1.

An agreement, made and entered into this 28th day of July, 1902, by and between the McCormick Harvesting Machine Co. (hereinafter called the "Vendor"), party of the first part, and William C. Lane (hereinafter called the "Purchaser"), party of the second part.

Whereas the Vendor is a corporation duly organized and existing under the laws of the State of Illinois and owns certain manufacturing properties located at Chicago, Ill., and employed in the manufacture of harvesting machinery and other properties intended for use in connection therewith; and

Whereas the purchaser desires to acquire said properties and intends, upon the acquisition of said properties, to sell, convey, and transfer the same to a corporation now existing or hereafter to be organized under the laws of the State of Illinois, or other State (hereinafter called the "Purchasing Company"), with capital stock as hereinafter provided:

Now, this agreement witnesseth that the parties hereto have agreed and covenanted as follows:

First. The Vendor agrees, for the considerations and upon the terms hereinafter stated, to sell, assign, transfer, convey, and deliver unto the Purchaser, his nominee or assign, by good and indefeasible title, free and clear of incumbrances, indebtedness, and liabilities, except as herein stated, and the Purchaser agrees to purchase, all and singular the real estate, factories, plants, buildings, improvements, machinery, patterns, tools, apparatus, fixtures, and appliances of the Vendor, and all the patents, inventions, devices, patent rights, licenses, trade-marks, trade names, and good will of all and singular said property as a going concern, and also all of the products manufactured and in process of manufacture, materials, supplies, and merchandise on hand at the time of closing said sale, and all and singular its then pending contract for the purchase of property or materials or the sale of product; also all interest in fiber lands, as well as all other property

of the Vendor appertaining to the Vendor's business aforesaid. There shall also be sold and purchased with said properties $20,000,000 (at face value and accrued interest) of bills and accounts receivable, representing the sales made by the Vendor. Such bills and accounts receivable are to mature prior to March 1, 1905, and are to be guaranteed as hereinafter provided. Cash may be substituted for the whole or any part of such accounts and bills receivable, at the option of the Vendor.

Second. The Vendor agrees that, as soon as practicable after the execution of this instrument, it will, in pursuance of due authority to be conferred by the vote or consent of all its stockholders, duly execute and acknowledge, and cause to be forthwith deposited with J. P. Morgan & Co., or a trust company designated by them, as depositary, proper deeds and other instruments of conveyance and sale for the granting, conveying, and transferring, as aforesaid, unto the Purchaser and its assigns, all the property hereinbefore recited, together with evidence of the vote or consent of the stockholders of the Vendor, as aforesaid. Such depositary shall hold the said deeds and other instruments in escrow and deliver the same to the Purchaser, or upon his order, only upon receiving for account of the Vendor the consideration hereinafter provided, and upon the performance by the Purchaser of the provisions hereof.

Third. The Vendor agrees to deliver to said depository, as soon as practicable, full statements in respect of its property and its assets and liabilities, its contracts for the purchase of materials and other property and for the sale of its manufactured products, and otherwise, relating to its property and business. The Vendor agrees that pending the performance of and while this contract is in force it will not, without the written consent of the Purchaser, or of said Purchasing Company, enter into any new contracts or assume any new obligations or make any purchases or sales such as are necessary and customary in the ordinary conduct of its regular business or to maintain it as a going concern and except such as may be necessary for the performance of agreements already entered into; nor make payments in advance of their maturity on pending contracts. The Vendor further agrees that during and while this contract is in force no increase shall be made in its capital stock or in

the capital employed in its business, and no bonds issued, and that no mortgage, lease, or conveyance shall be made upon or in respect of its real estate or plant without the written consent of the Purchaser; and also, that in case of any difference of opinion between the Vendor and the Purchaser in relation to the conduct of the business of the Vendor, such difference shall be decided by J. P. Morgan or George W. Perkins, whose decision shall be final. All service contracts of the Vendor taken over by the Purchasing Company shall be terminable on 60 days' notice, unless specific cases otherwise determined by said Purchasing Company; and the Vendor shall indemnify the Purchasing Company against any claim under profit-sharing contracts. In the case of any property delivered to the Purchaser by the Vendor, which is subject to incumbrance, the amount of the incumbrance shall be deducted in determining the value thereof.

Fourth. The Purchaser and said Purchasing Company, and his or its nominees, the appraisers, accountants, and counsel, shall have the right to examine the deeds and other instruments of conveyance and transfer so to be deposited by the Vendor with the depositary, as aforesaid, and shall, if the Purchaser shall so require, be furnished with abstracts of title, title deeds, and surveys which may facilitate the examination of the title to the property to be conveyed or transferred, and shall have free access to all the deeds, contracts, books, and records of the Vendor for the purpose of examining and verifying the statements made with respect to its property, business assets, liabilities, and corporate status.

Fifth. The purchase price to be paid by the Purchaser to the Vendor for all and singular said property, shall be the aggregate of the several appraisals and valuations hereinafter provided for, and of said accounts and bills receivable and cash, if any, and shall be payable in full paid and nonassessable shares of the capital stock of said Purchasing Company taken at par.

In order to make such appraisals and fix and determine such valuations, the property of the Vendor shall be classified as follows:

(1) Real estate, buildings, factories, warehouses, fixtures, machinery, tools, patterns, drawings, molds, and all other

personal property used in connection with or appertaining to the Vendor's business and which is not intended for sales in the ordinary course of business or to form part of or to be consumed in the manufacture of the Vendor's products, and including pending contracts for purchase of real property and for construction of buildings or fixtures, but not including the property and contracts otherwise classified. The assets of this class are hereinafter collectively designated as "Plant."

(2) All materials on hand, manufactured, unmanufactured, or in process of manufacture, including any and all articles intended to form part of or to be used in manufacturing the Vendor's product. The assets of this class are hereinafter collectively designated as "Materials on hand."

(3) Unexecuted contracts or orders for the sale of the Vendor's manufactured products, but not including contracts or orders for deliveries after the year 1902, for which latter contracts and orders (although to be transferred) no allowance shall be made. No allowance shall be made for contracts or orders for delivery prior to January 1, 1903, unless the material necessary for the completion of the machines or other manufactured products shall be in the possession of the Vendor and upon its plant at the time of the appraisal. Such contracts are hereinafter collectively designated as "Pending sales."

(4) All contracts heretofore entered into by the Vendor for the purchase of material to be used in the manufacture of its products. Such contracts are hereinafter collectively designated as "Material contracts."

(5) The railroad property and equipment belonging to the Vendor, including the lease which has been agreed upon with the Atchison, Topeka & Santa Fe Railroad Co., such property being hereinafter designated as the "McCormick Railroad."

(6) Patents, patent rights, devices, inventions, licenses, trade-marks, trade names and good will, including the value of the established business, name, standing in the trade, stability of business, organization, trade or custom as a going concern. Such assets are hereinafter collectively designated as "Patents, good will, etc."

The value of the plant, as above defined, shall be ascertained and determined by three appraisers, who shall fix the

present value of such plant as a going concern. One of such appraisers shall be nominated and appointed by the Vendor and the other two by J. P. Morgan & Co.

The present value to a going concern of said materials on hand, of the said pending sales, and of the said materials contracts, as above defined, shall similarly be determined by three appraisers, one to be nominated and appointed by the Vendor and two by J. P. Morgan & Co. Such appraisers shall make allowance in their judgment for unprofitable contracts.

The value of the McCormick Railroad to a going concern, as above defined, shall be determined by J. P. Morgan or George W. Perkins.

The value of the patents and good will shall, for the purposes of this contract, be a sum equal to the net profits of the Vendor during the two years ending November 30, 1902, as ascertained in the manner hereinafter provided, plus 10 per cent thereof; and to such amount shall be added the value of the name, standing in the trade, stability of business, organization, trade, custom, etc., of the Vendor as a going concern, which value shall be fixed by J. P. Morgan or George W. Perkins in his sole discretion.

The profits of said two years shall be ascertained and reported to J. P. Morgan & Co. by three accountants, one of whom shall be nominated by the Vendor and the other two by J. P. Morgan & Co. In calculating the net profits of the business there shall be excluded all allowance for interest on bills and accounts receivable, as well as the cost of collecting bills and accounts receivable, and all interest paid or payable on moneys used by the Vendor and belonging to the trustees of Mary V. McCormick or Cyrus H. McCormick, Harold F. McCormick, or Stanley McCormick and interest on the sum of $1,000,000 borrowed by the Vendor on the security of property belonging to the Messrs. McCormick individually. Said accountants in calculating the net profits for said two years shall make allowance for depreciation or loss, if any, on bills and accounts receivable, for depreciation or loss, if any, of materials on hand, or for depreciation, if any, of the said plant from wear and tear or otherwise. In each case hereinbefore enumerated the decision, appraisal, or report of a majority of the appraisers or accountants or

the decision of J. P. Morgan or George W. Perkins (if sole arbitrator or appraiser), as the case may be, shall be binding and conclusive upon the parties hereto.

Sixth. Payment of the amount of all contracts or orders for sales of manufactured products included as assets of the Vendor as aforesaid and transferred under this contract, shall be guaranteed to the satisfaction of J. P. Morgan & Co. by the Vendor, and the net value thereof shall be appraised on that basis. Any and all accounts and bills receivable transferred by the Vendor hereunder shall be taken as their face value and accrued interest to date of transfer; but the Vendor shall guarantee and hereby does guarantee that the Purchaser or Purchasing Company shall realize thereon such face value and interest accrued and to accrue and that said principal and interest shall all be received on or prior to the 1st day of March, 1905. The collections shall be made by the Purchasing Company, but the expenses of collection shall be borne by the Vendor. Pending such collections, the Vendor agrees to advance and pay to the Purchasing Company on demand, from time to time, on account of such guaranty such amounts as the board of directors of the Purchasing Company may determine or convenient for the conduct of its business, but not in excess of such amounts as J. P. Morgan & Co. may from time to time approve. If such advance payments be made by the Vendor, then the Purchasing Company shall transfer to the Vendor or its nominees an equal amount in principal and accrued interest of uncollected accounts or bills receivable of the earliest maturities. The Purchasing Company may take such measures as to it may seem wise, for the collection of the accounts and bills receivable and grant extensions and indulgencies to debtors by whom the same are payable without release of or prejudice to such guaranty or extension or change of the obligation of the Vendor to make payments as aforesaid. The Purchasing Company shall from time to time, on demand, furnish the Vendor a full statement showing which accounts and bills receivable remain unpaid, and what, if any, disposition has been made in regard thereto or steps taken to enforce the collection thereof.

The Vendor shall secure the guaranties in this article provided for, by collateral or otherwise, to the satisfaction of J. P. Morgan & Co. in their discretion.

Seventh. The Purchasing Company shall have such corporate title, capital stock, organization by-laws, directors, and committees as may be approved by J. P. Morgan & Co., and shall have, in addition to materials on hand and inventories, a working capital of $60,000,000 to be represented by cash or bills and accounts receivable guaranteed as aforesaid.

Eighth. The amount and the classes (if there be more than one class) of the capital stock of the Purchasing Company shall be determined after the ascertainment of the aggregate value of all its assets and properties; but such amount and such classes shall severally be satisfactory to J. P. Morgan & Co. If, however, there be only one class of stock, the capital stock, the capital stock shall not exceed $120,000,000 par value, even though the aggregate value of the assets and properties of the Purchasing Company be in excess thereof. If there be both preferred stock and common stock, the preferred stock shall not exceed $120,000,000 par value and shall entitle the holders to cumulate preferential dividends at the rate of but not to exceed 6 per cent per annum and accumulated dividends; and the common stock shall not exceed the remaining value of the corporate assets and properties as so determined, which value may be ascertained and determined irrespective of the special appraisals which are to be made under this agreement.

If there shall be two classes of stock, then and in that event the Vendor shall be entitled to receive as additional purchase price under this agreement common stock to an amount that shall bear to the total issue thereof the same proportion that the preferred stock to be received by the Vendor under this agreement shall bear to the total issue of the preferred stock.

Ninth. The purchase provided for in this contract shall take effect as of such day in September, 1902, as shall be designated by the Purchaser with the approval of J. P. Morgan & Co.; the appraisals shall be made as of such dates as nearly as practicable, and the performance of the contract shall be completed prior to January 1, 1903.

Tenth. The charter or certificate of incorporation or organization of the Purchasing Company shall provide, among other things, that the capital stock of the corporation shall not be increased or diminished except upon the affirmative

vote or consent of the holders of at least two-thirds of each class of the outstanding capital stock of the company. Said charter or certificate may also provide that the stockholders may enter into a voting trust of their stock for a limited period. The charter or certificate shall likewise provide that no mortgage or lien upon the real property, plants, tools, or machinery of the Purchasing Company shall be created without the affirmative vote or the consent of the holders of at least two-thirds of each class of the outstanding capital stock.

Eleventh. The Vendor undertakes and agrees that it, or the holders of the stock of the Purchasing Company so to be issued in payment for the property to be transferred and conveyed under this agreement, shall deposit their stock with J. P. Morgan & Co., or a trust company to be designated by them, as depositary, upon a voting trust, which shall provide, among other things, for the appointment of three voting trustees, one of whom shall be J. P. Morgan or George W. Perkins and the other two shall be persons appointed by J. P. Morgan & Co. The voting trust agreement shall be for the period of 10 years, with provision, however, that it may be terminated at any time after the expiration of 5 years upon 90 days' notice, if a majority of the voting trustees shall so decide. The capital stock of the Purchasing Company shall be transferred to such voting trustees, who shall issue transferable certificates of beneficial interest entitling the holder to any dividends, distribution of profits, and subscription rights which may accrue in respect of the stock so held by the voting trustees, and upon the termination of the voting trust entitling the holder to a proportionate amount of the stock so transferred to the voting trustees. The form, terms, and provisions of the voting trust agreement shall be subject to the approval of J. P. Morgan & Co. The voting trust agreement shall contain adequate restrictions upon the voting power of the voting trustees in respect of an increase or diminution of capital stock, or the creation of any mortgage as aforesaid, so that any vote or consent by the voting trustees for any such increase or diminution, or mortgage, shall be given only upon the affirmative vote or written consent of the owners of a corresponding amount of the voting trust certificates of interest outstanding.

The Vendor, or a majority of its stockholders, shall further agree with J. P. Morgan & Co. that during the first year after the issue of such stock or voting trust certificates, the Vendor or its stockholders shall own, and shall refrain from selling or otherwise disposing of, at least 80 per cent of the original holdings acquired under this agreement or otherwise; during the second year at least 60 per cent of such original holdings; during the third year at least 40 per cent of such original holdings; and thereafter and during the existence of the voting trust, at least one-third of such original holdings; provided, however, the Vendor (or its stockholders) may at any time after the expiration of the fourth year withdraw from the custody of J. P. Morgan & Co., and sell or otherwise dispose of, the remaining one-third of said original holdings, or any part thereof, but in such case any Voting Trustee representing such holdings shall immediately resign as trustee if desired by the two remaining trustees. A successor shall thereupon be appointed by the other two trustees.

As guarantee for the performance of the foregoing covenant not to sell or otherwise dispose of stock or voting trust certificates, the Vendor or its stockholders shall severally pledge with J. P. Morgan & Co. an amount of stock or voting trust certificates equal to the proportion which they have agreed to continue to own, which stock shall be released and delivered to them or upon their orders, from time to time, as they may become entitled to sell; but, except as herein otherwise provided, one-third of the total original holdings as aforesaid shall remain pledged with J. P. Morgan & Co., during the existence of the voting trust.

In case during the first year after the issue of said stock by the Purchasing Company the Vendor shall desire to sell any of the stock of voting trust certificates which it is free to sell under the provisions hereof, it shall offer the stock to J. P. Morgan & Co. by notice in writing, specifying the amount of the stock and the price at which the same is offered, and the Vendor shall be entitled to sell such stock to others only in case J. P. Morgan & Co. shall not within 20 days thereafter purchase said stock at the price named in the notice or at a price satisfactory to the Vendor.

Twelfth. This contract, or any part thereof, may be transferred by the Purchaser to the Purchasing Company, and such Purchasing Company may thereupon enforce all and singular its terms and conditions as fully to all intents and purposes as if it were a party thereto. The place of performance of this contract shall be at the office of the Hudson Trust Co., Hoboken, N. J.

Thirteenth. The individual holders of a majority of the capital stock of the Vendor shall jointly and severally guarantee the performance of this contract by the Vendor as well as the substantial performance of all and singular the covenants, agreements, and guaranties which may survive the dissolution of the Vendor, should such dissolution be finally determined upon.

The individual holders of all the capital stock of the Vendor shall, as soon as practicable, and before the final consummation of this contract, cause to be deposited with J. P. Morgan & Co., or with a trust company to be designated by them, as depositary, certificates representing all the capital stock of the Vendor, duly indorsed for transfer in blank, and such depositary, upon the Vendor receiving said purchase price, shall deliver said certificates to the purchaser, his nominee or assign, but the original stockholders shall be entitled to all payments payable upon said stock as their distributive share of the purchase price hereunder, or of any other assets of the Vendor not herein undertaken to be conveyed or transferred.

Fourteenth. The Purchaser undertakes to duly secure by contract the appointment of J. P. Morgan & Co. as the fiscal agents of the Purchasing Company and their acceptance of such appointment in order that the Purchasing Company may secure and have the benefit and advantage of the advice of said firm in the management of its financial affairs.

If any dispute should arise under this contract as to its true intent or meaning, or in respect of the performance of any part thereof, whether between the parties hereto or between the Vendor and the Purchasing Company, the matter in dispute in each and every case shall be left to J. P. Morgan or George W. Perkins as sole arbitrator, and the decision of such arbitrator shall be binding and conclusive upon the parties.

Fifteenth. In case any appraiser, arbitrator, accountant, or voting trustee shall for any reason fail or cease to serve, then and in said event another or a successor shall be nominated and appointed in his place by the Vendor or by J. P. Morgan & Co., respectively, as the case may be, subject, however, in the case of voting trustees, to the provisions of the voting trust agreement.

Reference in this agreement to J. P. Morgan & Co. shall apply to that firm as now or hereafter constituted.

In witness whereof the party of the first part has caused these presents to be executed in its corporate name by its president and its corporate seal to be hereunto affixed, attested by its secretary, and the party of the second part has hereunto set his hand and seal the day and year first above written.

[SEAL.] McCORMICK HARVESTING MACHINE CO.,
By CYRUS H. McCORMICK, *President.*

Attest:

HAROLD F. McCORMICK, *Secretary.*

WM. C. LANE.

EXHIBIT 2.

This agreement, made in the city of New York this 13th day of August, 1902, by and between William C. Lane, party of the first part, and George W. Perkins, Charles Deering, and Cyrus H. McCormick (hereinafter called the "Voting Trustees"), parties of the second part, witnesseth as follows:

Whereas the International Harvester Co. (hereinafter called the "Company") is a corporation organized under the laws of the State of New Jersey, with a capital stock of $120,000,000, divided into 1,200,000 shares of the par value of $100 each, all of which stock has been issued and is outstanding; and

Whereas the party of the first part has caused to be delivered to the Voting Trustees certificates for fully paid shares of the capital stock of the company to the amount of its entire capital stock (excepting such shares as are necessary to qualify directors), and said certificates, together with such other certificates for stock of the company as hereafter, from time to time, may be delivered hereunder, are to be held and disposed of by the Voting Trustees under and pursuant to the terms and conditions hereof: Now, therefore,

First. The Voting Trustees agree with the party of the first part, and with each and every holder of stock trust certificates issued as hereinafter provided, that from time to time, upon request, they will cause to be issued to the party of the first part, or upon his order, in respect of said stock of the company received from him, certificates in substantially the following form:

INTERNATIONAL HARVESTER CO.

No. Shares

STOCK TRUST CERTIFICATES.

This certifies that, as hereinafter provided, ——— will be entitled to receive a certificate or certificates for ——— fully paid shares, of $100 each, of the capital stock of the International Harvester Co., and, in the meantime, to receive payments equal to the dividends, if any, collected by the undersigned Voting Trustees upon a like number of such

shares standing in their names; such dividends, if received by the Voting Trustees in stock of said company, to be payable in stock trust certificates. Until the actual delivery of such stock certificates, the Voting Trustees shall possess, in respect of any and all of such stock, and shall be entitled, in their discretion, to exercise all rights and powers of absolute owners of said stock, including the right to vote for every purpose and to consent to any corporate act of said company; it being expressly stipulated that no voting right passes by or under this certificate, or by or under any agreement expressed or implied.

This certificate is issued pursuant to, and the rights of the holder are subject to, and limited by, the terms and conditions of a certain agreement, dated the 13th day of August, 1912, by and between William C. Lane and the undersigned Voting Trustees.

Stock certificates shall be due and deliverable in exchange for stock trust certificates on, but not before, August 1, 1912, unless a majority of the Voting Trustees elect, as they may, to terminate said agreement after August 1, 1907, upon not less than 90 days' notice.

This certificate is transferable only on the books of the Voting Trustees by the registered holder thereof, either in person or by attorney duly authorized, according to the rules established for that purpose by the Voting Trustees, and on surrender thereof; and, until so transferred, the Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever, except that they shall not be required to deliver stock certificates hereunder without surrender hereof.

This certificate is not valid unless duly signed on behalf of the undersigned Voting Trustees by ——— their agents and also registered by ——— as registrar.

In witness whereof, the undersigned Voting Trustees have caused this certificate to be signed by their duly authorized agents ———, this —— day of ———, 190–.

VOTING TRUSTEES.

By ——— ——— (their agents).

By ——— ———, *President.*

Registered this —— day of ———, 19—.

By ——— ———, *Registrar.*

By ——— ———, *Secretary.*

Second. At any time after August 1, 1907, if a majority of the Voting Trustees so decide, this agreement may be terminated; but at least 90 days' notice of an intention to terminate this agreement must be given by the Voting Trustees according to the provisions of article 10 hereof. This agreement shall in any event terminate on Angust 1, 1912, without notice by or action of the Voting Trustees. On August 1, 1912, or upon the earlier termination of this agreement, the Voting Trustees, in exchange for, or upon surrender of, any stock-trust certificate then outstanding, shall, in accordance with the terms hereof, deliver proper certificates of stock of the company, and may require the holders of stock-trust certificates to exchange them for certificates of capital stock.

In case on or after the termination of said agreement the Voting Trustees shall deposit with an incorporated bank or trust company of good standing, having an office in the city of New York, stock certificates properly indorsed for transfer in blank, representing stock of the company to a par amount equal to the par amount of the stock-trust certificates outstanding, with authority in writing to such bank or trust company to deliver the same in exchange for stock-trust certificates when and as surrendered for exchange as herein provided, then all further liability of said trustees, or any of them, for the delivery of stock certificates in exchange for stock-trust certificates shall cease and determine.

Third. The term company, for the purposes of this agreement and for all rights thereunder, including the issue and delivery of stock, shall be taken to mean the said corporation organized under the laws of the State of New Jersey, or any successor corporation or corporations into which the same may be consolidated or merged.

Fourth. From time to time hereafter, the Voting Trustees may receive any additional fully paid shares of the capital stock of the company, and in respect of all such shares so received will issue and deliver certificates similar to those above mentioned, entitling the holders to the rights above specified. In case the company shall hereafter have both common and preferred stock, the Voting Trustees may receive, subject to the provisions hereof, certificates representing fully paid stock of each class, and the stock-trust certificates shall indicate upon their face whether they repre-

sent common or preferred stock, and holders of stock-trust certificates representing one class of stock shall have no interest in or claim upon stock of the other class. In any such event the stock-trust certificates outstanding shall be surrendered by the holders thereof in exchange for new certificates specifying the class of stock, whether preferred or common, represented thereby. In case the Voting Trustees shall receive any stock of the company issued by way of dividend upon stock held by them subject to said agreement, they shall hold such stock subject to the terms of said agreement, and shall issue stock-trust certificates representing such stock to the respective registered holders of the then outstanding stock-trust certificates entitled to such dividend.

Fifth. Any Voting Trustee may, at any time, resign by delivering to the other trustees, in writing, his resignation, to take effect 10 days thereafter. In case of the death or the resignation or the inability of any Voting Trustee to act, the vacancy so occurring shall be filled by the appointment of a successor or successors, to be made as follows: Any successor in the line of succession to George W. Perkins shall be appointed by J. P. Morgan & Co., as said firm now is or may hereafter be constituted. Any successor in the line of succession to Charles Deering shall be appointed by James Deering, or, in case of his failure to act, by Richard F. Howe, and, in case of the failure of either to act, by the other two Voting Trustees. Any successor in the line of succession to Cyrus H. McCormick shall be appointed by Harold F. McCormick, or, in case of his failure to act, by Stanley McCormick, and, in case of the failure of either to act, by the other two Voting Trustees. The term Voting Trustee as used herein and in said certificates shall apply to the parties of the second part and their successors hereunder.

Sixth. The Voting Trustees may adopt their own rules of procedure. The action of a majority of the Voting Trustees expressed from time to time at a meeting or by writing with or without a meeting, shall, except as otherwise herein stated, constitute the action of the Voting Trustees and have the same effect as though assented to by all. Any Voting Trustee may vote in person or by proxy and may act as a director or officer of the company.

Seventh. In voting the stock held by them, the Voting Trustees will exercise their best judgment from time to time to secure suitable directors, to the end that the affairs of the company shall be properly managed, and in voting and in acting on other matters which shall come before them as stockholders, or at stockholders' meetings, will likewise exercise their best judgment, but they assume no responsibility in respect of such management or in respect of any action taken by them or taken in pursuance of their consent thereto as such stockholders, or in pursuance of their votes so cast, and no voting trustee shall incur any responsibility by reason of any error of law or of any matter or thing done or suffered or omitted to be done under this agreement, except for his own individual willful malfeasance.

Eighth. The Voting Trustees possess and shall be entitled, in their discretion, to exercise, until the actual delivery of stock certificates in exchange for stock-trust certificates, all rights and powers of absolute owners of said stock, including the right to vote for every purpose and to consent to any corporate act of said company, it being expressly stipulated that no voting right passes to others by or under said stock-trust certificates, or by or under this agreement, or by or under any agreement, expressed or implied. The Voting Trustees shall not, however, during the pendency of this agreement, vote in respect of the shares of the capital stock of the company held by them, to authorize or consent to any mortgage or other lien upon the property of the company, or (except as herein otherwise specifically provided) to authorize any increase or diminution in the amount of the authorized capital stock of said company, except with the consent in each instance of the holders of stock-trust certificates representing two-thirds in amount of each class of stock at the time deposited hereunder, given in writing, or by vote at a meeting called for that purpose; provided, however, that the Voting Trustees may, in their discretion, prior to July 1, 1903, without the consent of holders of any stock-trust certificates, consent to and authorize the increase of the company's capital stock to an amount not exceeding $180,000,000.

Ninth. For the purpose of this agreement any consent in writing by the holders of stock-trust certificates may be in any number of concurrent instruments of similar tenor,

and may be executed by the certificate holders in person or by agent or attorney appointed by an instrument in writing. Proof of the execution of any such consent, or of a writing appointing any such agent or attorney, or of the holding by any person of stock-trust certificates issued hereunder, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Voting Trustees with regard to any action taken by them under such consent, if made in the following manner, viz: (*a*) The fact and date of the execution by any person of any such consent may be proved by the certificate of any notary public or other officer authorized to take, either within or without the State of New York, acknowledgment of deeds to be recorded in any State, certifying that the person signing such consent acknowledged to him the execution thereof, or by the affidavit of a witness to such execution. (*b*) The amount of stock-trust certificates held by any such person executing any such consent, and the issue of the same, may be proved by a certificate executed by any trust company, bank, or other depositary (wheresoever situated) whose certificate shall be deemed by the Voting Trustees to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depositary, or exhibited to it, the stock-trust certificates numbered and described in such depositary's certificate.

Tenth. All notices to be given to the holders of stock-trust certificates hereunder shall be given either by mail to the registered holders of stock-trust certificates at the addresses furnished by such holders to the Voting Trustees or to the agents of the Voting Trustees, or by publication in two daily papers of general circulation in the city of New York and in two daily papers of general circulation in the city of Chicago, twice in each week for two successive weeks; and any call or notice whatsoever, when either mailed or published by the Voting Trustees as herein provided, shall be taken and considered as though personally served on all parties hereto, including the holders of said stock-trust certificates, and such mailing or publication shall be the only notice required to be given under any provision of this agreement.

Eleventh. This agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

In witness whereof the several parties have hereunto set their hands and seals in the city of New York the day and year first herein above mentioned.

_____ _____ , [L. S.]
_____ _____ , [L. S.]
_____ _____ , [L. S.]
_____ _____ , [L. S.]

Voting Trustees.

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